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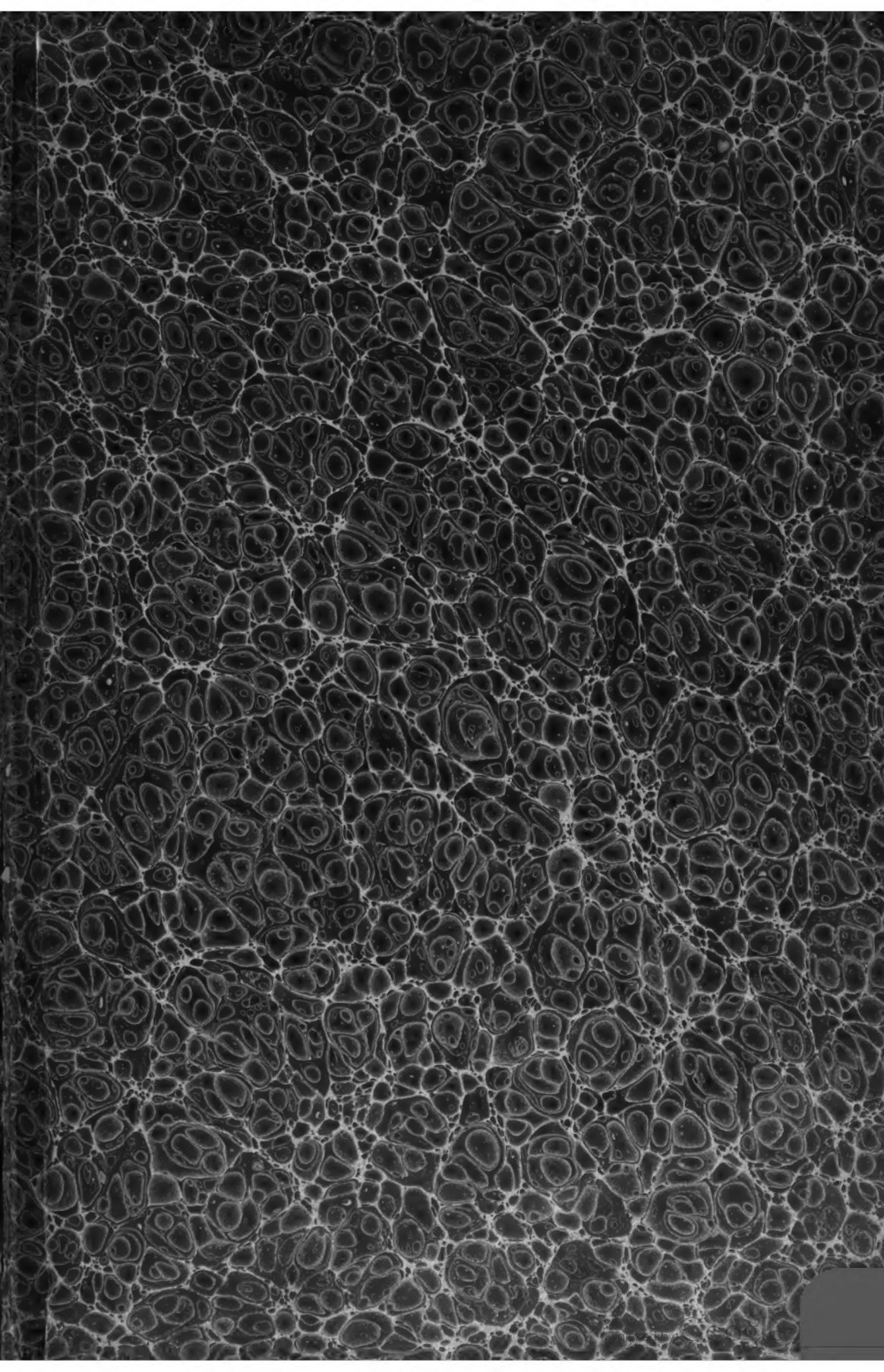
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Bd Feb. 1883.





OPINIONS OF THE PRESS.

"Those who have either to make themselves acquainted with the principles and provisions of Mr. Fitzjames Stephen's Indian Evidence Act, or to carry out its provisions in their judicial and magisterial capacity, will do well to read Mr. Whitworth's brief analysis of the Theory of Relevancy. Differing from the author of the Act in regard to the adequacy of his definition of Relevancy, Mr. Whitworth has worked out from the rules propounded under the Act what he conceives to be a fuller and more satisfactory statement. He arrives by this process of exposition at exactly the same result as Mr. Stephen, but claims for the new rules which he suggests that, although entirely different in form, they are identical with those of the Act in their effect. Some of the illustrations employed by Mr. Whitworth are drawn from Indian and some from European cases. At pp. 12 and 13 he gives an analysis, broken up into twenty illustrations, of the celebrated case of the German, Müller, tried for the murder of Mr. Briggs, showing on each point what it would be relevant to prove under the rules which he has devised, and we recommend its careful study to those who wish to grasp the author's views."—*Law Magazine and Review*, 1875-76.

"The author impugns the theory on which Mr. Stephen professed to base the most important principles of his Evidence Act, and propounds a new one of his own. And it seems to us that Mr. Whitworth has performed his task with much effect, and that the relevancy rules of the Act in question might be remodelled with advantage."—*Pioneer*.

"The theory on which these sections are founded is set forth by Mr. Stephen in the introduction to his English edition of the Act; and the general principle is stated to be, in effect, that all facts are relevant to one another which appear to be links in the same chain of consequence: "Facts may be regarded as relevant which can be shown to stand either in the relation of cause or in the relation of effect to the fact to which they are said to be relevant." Mr. George Clifford Whitworth, of the Bombay Civil Service, has lately criticized this theory in an ingenious and able pamphlet, and the frank acceptance of his criticism by Mr. Stephen enables us to enjoy the contemplation, as gratifying as it is rare, of a controversy which has ended in a real advancement of knowledge, and in a manner perfectly satisfying and honourable to both parties."—*Fortnightly Review*, 1876.

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THEORY OF RELEVANCY

FOR THE PURPOSE OF

JUDICIAL EVIDENCE.

BY

GEORGE CLIFFORD WHITWORTH,

BOMBAY CIVIL SERVICE,

FELLOW OF THE UNIVERSITY OF BOMBAY.

SECOND EDITION.

Bombay:
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Rec. Aug. 5, 1882

NOTE.

As I learn that there is still some demand for this Essay, and as the few copies originally printed in 1875 were sold off in the following year, I now issue a second edition. But I much regret that my official duties prevent me from revising and improving the work in the light of the criticism it received on its first appearance. The present is merely a reprint of the first edition.

There is, however, one piece of criticism which I take this opportunity of referring to. It was said in one review that my first rule is a practical abandonment of the scientific form of the others. But an examination of the connection of the first with the other rules will, I think, show that their scientific form is of independent value. The second, third, and fourth rules supply, I submit, a definition of relevancy, and would be complete if the subject were the theory of relevancy absolutely. The qualification applied by the first rule is required because the subject is the theory of relevancy *for the purpose of judicial evidence*. The theory is one thing: its application to a particular purpose is another. It might be well to have rules that would express at once both the principle and its limitation. Failing this, I have propounded one rule (an unscientific one) as to the limitation, and three others (scientific in form) as to the principle. But the importance or unimportance of the failure is to be measured by considering whether questions of difficulty in actual practice usually relate to the limitation of the principle or to the principle itself; in other words, whether, for the solution of such questions, unscientific or scientific rules are provided. Now, the first rule relates chiefly to what Sir James Stephen speaks of as "wide, general causes, which apply to all occurrences, are, in most cases, admitted, and do not require proof," and the test in cases of *disputed* relevancy will, I think, usually be found to be one of the other, the scientific, rules.

Surat Districts, 10th March 1881.

PREFACE TO THE FIRST EDITION.

IN order to avoid constant reference to the Evidence Act to decide whether or not a particular fact offered in evidence was relevant, I lately examined the sections treating of relevancy to see if I could discover what were their fundamental principles, as a recognition of those principles would naturally aid in keeping the substance of the provisions themselves in mind. I knew that Mr. Stephen had considered the question in his Introduction to the Evidence Act, and my first intention was merely to trace out the process by which the provisions of the Act could be deduced from his hypothesis that relevancy is the connection of events as cause and effect. But I found that this could not be done: that the hypothesis was insufficient to support the rules that the law prescribes. Then thinking it more likely that the hypothesis, so briefly and apparently hurriedly put forward, should be incomplete, than that the rules, founded on or at least corrected by, the experience of one so deeply versed in the applications of judicial evidence as Mr. Stephen, should contain anything of error, I proceeded, with the rules as a guide, to consider what was wanting to the hypothesis. I thus discerned what was, as far as I could judge, a perfect theory of relevancy. And this theory has suggested rules entirely different in their form from those of the Act, but identical with them in their effect.

Rules thus directly deduced from theory have, for practical purposes, a double advantage over those which are generalized from practice. First, because they are ready for use without effort of memory; for plain principles once recognized naturally recur to the mind whenever an instance to which they are applicable is met. And, secondly, inasmuch as language is imperfect, rules which disclose no principle, but rest entirely upon verbal enunciation, must be more liable to misapplication than those which carry their reasons with them.

In the first Chapter of what follows I have shown that the rules of the law are not founded directly upon principles, and have pointed out what seem to me some slight inaccuracies consequent upon this disadvantage.

In the second Chapter I have set forth the theory that Mr. Stephen's hypothesis and the rules have, together, guided me to, and deduced from it the rules it suggests, and illustrated them.

In the third Chapter, in order to establish the truth of my theory and the efficacy of my rules, I have taken all the forty-nine illustrations given in the Act to the rules therein contained, and shown that those rules and my rules determine the points in question with the same result.

Poona, 9th November 1875.

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THE
THEORY OF RELEVANCY
FOR THE PURPOSE OF
JUDICIAL EVIDENCE.

CHAPTER I.

A CONSIDERATION OF THE LAW OF RELEVANCY AS CONTAINED IN THE
INDIAN EVIDENCE ACT.

THE law upon the subject of the relevancy of facts in judicial evidence in India is contained in Sections 6—16 of the Indian Evidence Act (Act No. I. of 1872), which, omitting for the present the illustrations, are as follows :—

“6. Facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

“7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

“8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

“The conduct of any party, or of any agent to any party to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

“*Explanation* I.—The word ‘conduct’ in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

" *Explanation II.*—When the conduct of any person is relevant, " any statement made to him or in his presence and hearing, which " affects such conduct, is relevant.

" 9. Facts necessary to explain or introduce a fact in issue " or relevant fact, or which support or rebut an inference suggested " by a fact in issue, or relevant fact, or which establish the identity " of any thing or person whose identity is relevant, or fix the time " or place at which any fact in issue or relevant fact happened, or " which show the relation of parties by whom any such fact was " transacted, are relevant in so far as they are necessary for that " purpose.

" 10. Where there is reasonable ground to believe that two or " more persons have conspired together to commit an offence or any " actionable wrong, anything said, done, or written by any one of such " persons in reference to their common intention, after the time when " such intention was first entertained by any one of them, is a relevant " fact as against each of the persons believed to be so conspiring, as well " for the purpose of proving the existence of the conspiracy as for the " purpose of showing that any such person was a party to it.

" 11. Facts not otherwise relevant are relevant—

" (1) if they are inconsistent with any fact in issue or relevant " fact;

" (2) if by themselves or in connection with other facts they make " the existence or non-existence of any fact in issue or relevant fact " highly probable or improbable.

" 12. In suits in which damages are claimed, any fact which will " enable the Court to determine the amount of damages which ought " to be awarded is relevant.

" 13. Where the question is as to the existence of any right or " custom, the following facts are relevant—

" (a) Any transaction by which the right or custom was created, " claimed, modified, recognised, asserted or denied, or which was " inconsistent with its existence.

" (b) Particular instances in which the right or custom was " claimed, recognised, or exercised, or in which its exercise was " disputed, asserted, or departed from.

" 14. Facts showing the existence of any state of mind—such " as intention, knowledge, good faith, negligence, rashness, ill-will " or good-will towards any particular person, or showing the existence

"of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

"*Explanation.*—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

"15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

"16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact."

I use the word relevant always as it is used above and as Mr. Stephen uses it in the third chapter of his Introduction, and not as it is sometimes used as co-extensive with admissible. I mean by a relevant fact a fact that has a certain degree of probative force. All such facts are not admissible. They may be excluded under rules of evidence other than those which treat of relevancy. For example, a fact may be relevant but it may be one of a kind so easy to fabricate, or so difficult to test, or of so suspicious an origin, that it is more convenient to declare that it shall not be taken into consideration at all. I am not concerned with such questions now, but only with the simpler and narrower question as to what facts are relevant in the strict sense of the term.

How the word is used in both senses in the Evidence Act will appear from a reference to the Table of Contents. Part I. treats of "Relevancy of Facts," and, in this Part, Chapter II. has several divisional headings, one of which is "Of the Relevancy of Facts." Part I. deals with relevancy in its wide sense; Chapter II. of Part I. with relevancy in its strict sense. The ambiguity is unfortunate. Mr. Stephen tells us (page 55 of the Introduction) that relevancy is fully defined in Sections 6—11 of the Act, and until the double meaning of the word is observed, it seems inconsistent with this that many subsequent sections should declare certain things to be relevant, as do Sections 22, 23, 24, 28, 32, &c. What such sections as these have to declare is really not that the things they mention are relevant or irrelevant (using the words strictly), but, (that question being decided by Sections 6—16,) that those things are not to be excluded or admitted under rules relating to subjects other than relevancy, which would, without the provision made, exclude or admit them.

Probably no enactment in such few words as the sections above quoted ever brought so much assistance to the administration of justice; and Magistrates and Judges generally throughout India must be gratefully sensible of the relief these sections give, namely, rules distinct and in small compass as to what things *are* relevant, in the place of vague principles, hesitatingly drawn from individual precedents, and ever dependent upon the quotation of those precedents in order to be intelligible, as to what should be deemed *not* relevant.

But the question suggests itself, whether even these rules give the theory of relevancy in its simplest form, and they certainly do not show in themselves upon what principle it is that they have been founded. Why is one thing relevant and another thing irrelevant? Surely there must be some principle applicable to all cases by which it may be determined whether a particular fact is or is not relevant to another fact, without reference to a number of rules framed to meet different classes of cases. The purpose of judicial enquiries is not a purpose peculiar to them: all men upon occasion endeavour to ascertain, as quickly and as satisfactorily as they can, whether facts unknown to them personally have or have not happened. And what is calculated to aid the human mind in such enquiries must be something capable of being defined by the enunciation of its essential difference as well as by an enumeration of its details.

Mr. Stephen, in the third chapter of his Introduction to the Indian Evidence Act, has briefly considered this question, and has said that relevancy means the connection of events as cause and effect: "if these two words were taken in their widest acceptation, it would be correct to say that when any theory has been formed which alleges the existence of any fact, all facts are relevant which, if that theory was true, would stand to the fact alleged to exist either in the relation of cause or the relation of effect." (Page 52.) But the proviso that the words cause and effect must be taken in their widest acceptation does not seem to be sufficient. It seems necessary rather to take them in a transcendent sense. Suppose a man is charged with stabbing another, and it is alleged that at the moment of striking he uttered a certain expression. What he said is by the rules of evidence relevant (not merely upon the issue as to his intention, but also) upon the issue whether he stabbed the man or not. But in what acceptation of the words is his expression a cause or effect of the act of stabbing? Or consider the case of the Whitechapel murder now under investigation in London. Upon the issue, Did Wainwright murder Harriet Lane? it is offered in evidence that

the body before the Court is that of a woman who never bore children. How is this a cause or effect of the fact in issue? The widest acceptance of the words 'cause' and 'effect' will not include such facts as these. And if we give them the meaning necessary to make true the statement that relevancy means the connection of events as cause and effect, then the statement itself becomes of no use, because every fact will be relevant. No doubt to a being of such capacity of intelligence as to see the whole cause of every effect and the whole effect of every cause, everything that ever happened becomes one rigid fact and nothing is irrelevant. But for human purposes there is no question that relevancy and irrelevancy are realities; the difference between the two is recognizable by an ordinary human capacity, and must be something expressible in ordinary language.

The definition that relevancy means the connection of events as cause and effect, leaves us, then, in this difficulty: that if we take the words in any, even the widest, comprehensible sense, the definition does not include all facts which we know from our experience to be really relevant; and if we give them a transcendent meaning based upon our knowledge that all things precedent have gone together to make up the state of things existing at any time, and that no fact could ever have existed without the co-existence of every other fact that did exist at the same time, then the definition includes everything and so ceases to be a definition.

Thus the statement that relevancy means the connection of events as cause and effect, requires some addition, if the words are used in any ordinary sense, and some limitation, if they are given a transcendent sense.

Mr. Stephen, using the words in the latter sense, imposes one limitation and declares the practical existence of another. He says, (1) the rule is to be subject to the caution that every step in the connection must be made out, and (2) that "wide, general causes, which apply to all occurrences, are, in most cases, admitted, and do not require proof." The first of these limitations goes far to get rid of the objection that everything is relevant. The connection must be discernible, and every step in the connection proved or presumable. But if it is meant that each step must be recognizable as a proceeding from cause to effect, then, as shown above, things really relevant will be excluded. And if any other kind of connection will suffice, then it may be said of both the limitations, that they are of little service, that the help they give in deducing practical rules from the general principle is small. For those rules are least likely to

be appealed to in the case of wide general causes, or occurrences the connection of which with the fact in issue is not traceable. The object of the rules is to keep out irrelevant matter that is brought forward. As a fact such matter is submitted as evidence every day. Such matter does not usually consist of wide general causes that are admitted, nor of occurrences that have *no* connection with the facts in issue, and therefore these limitations do not exclude it. Therefore these limitations are not sufficient.

Now as the theory propounded falls short of defining what relevancy is, so we may expect to find in the rules themselves things that cannot be explained by the theory. Again, as the rules are not deduced from first principles but are generalizations from actual experience, it is possible that in some unusual cases the language of the rules may not prescribe with accuracy the true limit of relevancy. And, thirdly, and for the same reason, it is possible that the rules laid down may not be in every part strictly confined to the subject of relevancy.

Thus it is not immediately apparent, from the theory set forth, why one part of a transaction throws light upon another part which is so distinct from the first as to form in itself a fact in issue. When Mr. Hall shot three or four Gaekwari sowars, and it was a fact in issue whether he shot a particular one, no doubt the fact that he shot the others increased the probability of his having shot the one in question. But the theory does not afford a ready explanation of this.

By Section 7, those facts are relevant to facts in issue "which constitute the state of things under which they happened." A Magistrate lately convicted some persons of rioting, and, the object of the riot having been to offend some Hindu religious reformers, he commenced his judgment with a general history of religion and religious reformation down to the present time. The Judge before whom the case came on appeal, remarked upon the irrelevancy of this, and of course it was utterly useless; but the rule quoted does not seem to exclude evidence of it.

By the same section, facts which afford an "opportunity" for the occurrence of a fact in issue, or relevant facts, are relevant. The theory does not explain why. When Mr. Hall shot the sowars, the fact that he had a rifle, gave him an opportunity of shooting the men he shot; but it gave him equal opportunity of shooting other persons whom he did not shoot. Its particular bearing upon the fact in issue to make it relevant is not explained.

Section 8 is partly concerned with the admissibility of evidence of statements. It includes the substance of the English rule that declarations which are part of the *res gestæ* may be proved. But this has

nothing to do with relevancy strictly so called. (See remarks, in Chapter III., page 16, upon Illustration (j) of this Section.)

Section 9 declares facts necessary to "explain or introduce" a fact in issue to be relevant, but prescribes no test of the necessity. Is there no danger of useless matter being brought upon the record under this rule on the ground that it explains or introduces something to follow? It is true there is a provision, under the law for the examination of witnesses, that when either party proposes to give evidence of any fact, the Judge may ask in what manner the fact would be relevant, and need not admit it unless he thinks it would be relevant (Sec. 136, Ev. Act); but still whether or not the fact is necessary to explain or introduce may be a disputable matter. The first illustration says that when the question is whether a given document is the will of A, the state of A's property and of his family at the date of the alleged will *may* be relevant facts. Now it is obvious that some particulars about the property would be useful to be known, and some would be useless. So the rule seems partly to fail of its object, in that it does not define what class of particulars is relevant.

Section 10 is a rule relating to one particular kind of transaction, conspiracy; and Section 12 refers only to the question of damages. But the mind sets to work to ascertain such facts as these in just the same way as any other facts, and it does not appear why special rules are requisite. When any person is charged with conspiracy, one of the facts in issue is the existence of the conspiracy, its absolute existence without reference to the accused person; and from the nature of the thing itself, requiring as it does the action of more than one mind, it is to be expected that causes of it and effects of it will be found existing outside the mind, and without the knowledge, of a particular person. Therefore no rule is required to make such causes or effects or other connected facts relevant to the fact in issue.

But the rule goes on to declare that such facts are relevant also for the purpose of showing that the accused person was a party to the conspiracy. Well, if such facts will show that, clearly they are in very truth relevant. But it is obvious that very many such facts will have no bearing whatever upon the question of the accused person's complicity. And it seems an error in the rule to declare all such facts relevant for that purpose, instead of showing which are and which are not. Consider some such conspiracy as that which went by the name of Fenianism. Suppose a man is being tried in Ireland for so conspiring. Suppose he had been in prison for a month before trial. Suppose the Court had received abundant evidence of the existence, nature and

objects of the conspiracy. Still under this rule the Court could not refuse to listen to witnesses just arrived from America stating that a party of Fenians had burnt a farm there a fortnight before the day of trial—this to prove the accused person's complicity in the conspiracy.

Section 14 declares that facts which show the existence of any "state of mind" are relevant when the existence of such state of mind is in issue or relevant. Looking at the illustrations, it seems doubtful whether the expression "state of mind" is wide enough. One of the states of mind mentioned is "knowledge." Illustration (c) is an example of this. There the question is whether a man knew that his dog was ferocious; and the facts that the dog had bitten several persons and that they had complained to the owner are relevant. These facts are really connected with the fact in issue through the owner's knowledge. But Illustration (a) also purports to be an example of a fact being relevant as tending to show knowledge. The question there is whether a person found in possession of a stolen article knew that it was stolen; and it is said that the fact that, at the same time, he was in possession of many other stolen articles is relevant as tending to show that he knew each and all of the articles to be stolen. No doubt the fact is relevant, but it is not through the receiver's knowledge that it is connected with the fact in issue. What it proves is not a state of mind, but a habit, a habit which makes the receiving with a guilty knowledge a more likely fact than it would be without proof of the habit.

CHAPTER II.

THE THEORY OF RELEVANCY NEWLY PROPOUNDED, WITH NEW RULES DEDUCED FROM IT.

EVERY fact in issue may be affirmed or denied; and that not merely in the bare form in which it may be stated as a fact in issue, but in every detail of the meaning of that statement. The whole includes the part; if any fact is affirmed as a whole, any part of it may be affirmed or denied; anything implied by an affirmation is really part of that affirmation and may be expressly affirmed or denied. It may be in issue merely, Did A murder B? But if, as the affirmation is enquired into, it is found to mean that A murdered B at a particular hour and a particular place, then, that A was in that place at that hour, may be affirmed or denied. The issue may be merely, Did Wainwright murder

Harriet Lane? But if those affirming it produce a body saying it is Harriet Lane's, then anything showing that it is or is not may be put forward. Or the issue may be, Did the accused person attempt to poison Colonel Phayre? But if it is found that the charge means that the accused person put arsenic into a glass of sherbet which, from his knowledge of Colonel Phayre's habits, he knew Colonel Phayre would drink, then Colonel Phayre's habit of drinking sherbet at a particular time and the prisoner's knowledge of this are parts of the fact in issue.

But besides the matters expressly or virtually in issue, some surrounding matters may aid in determining an unknown fact. Knowing that the progress of events is from cause to effect, any fact that seems likely to have caused the fact to be determined, or any fact that suggests the fact to be determined as a cause of it, may be of use.

Again, one cause may have many effects and the cause may be ascertainable from one effect as well as from another. If then in endeavouring to ascertain whether a particular event has happened we see some other event that suggests as its cause something that would probably have caused the thing we want to ascertain, then that event will be of use. For example, we want to ascertain whether A stabbed B, and we hear that on the occasion on which he is said to have done so, A said to B, "Then die." Now this seems to imply just such volition employing the tongue as would employing an armed hand stab B. The words and the fact in issue are effects of the same volition. Similarly were A charged with poisoning B, the fact that before the death of B he procured poison of the kind that was administered to B would be relevant. The procuring the poison is an effect of a cause which might be the cause of the fact in issue.

Thus there are four classes of fact which aid in determining a fact in issue—

- (1) Any part of the fact alleged or any fact implied by the fact alleged;
- (2) Any cause of the fact;
- (3) Any effect of the fact;
- (4) Any fact having a common cause with the fact in issue.

But it is not the whole of these facts that are of use. Some facts connected with the fact in issue in one of the four ways mentioned may be of a general nature, existing whether or not the fact in issue happened and therefore indicating nothing as to whether it happened or not. For example: A is charged with the murder of B by pushing him over a precipice. Here the fall of B to the ground after he was pushed

over is as much a cause of his death as the pushing over, and as much an effect of the push as his death is. But gravitation is a general fact and exists all the same whether B went over the precipice or not, and proof of it is therefore needless.

Besides such general facts there may be facts connected with the fact in issue in one of the four ways, but with such a very slight bearing upon it that their probative force is quite insignificant; as, for instance, if a boyish quarrel of fifty years ago were brought forward to prove ill-feeling between two men who had joined in partnership twenty years before.

To meet both these classes of cases, one proviso only is requisite, namely, that no fact is relevant to another unless it makes the existence of that other more likely. It is not necessary to say anything of the degree of probability the fact must raise. The test is obvious. The Judge who has eventually to decide whether the fact in issue is proved or not, must decide whether the fact offered in evidence will, if proved, aid him in that decision.

The theory, then, so far as we have gone, is this. Those facts are relevant to a fact in issue the existence of which makes the existence of the fact in issue more probable, and they are found to be connected with the fact in issue in one of these ways, as being, (1) part of the fact in issue, (2) cause of it, (3) effect of it, or (4) an effect of a cause of it.

But as, relying upon the principle that effects follow causes, we take from the surrounding circumstances facts that appear to be probable causes or probable effects of a fact unknown, as a means of proving it; so, upon the same principle, we may first consider what would be probable causes or effects of the fact unknown, and look upon their absence as a means of disproving it.

Therefore in addition to the four classes of facts above mentioned, which may be said to be positively relevant, we have the following four classes which may be called negatively relevant: (1) facts showing the absence of what might be expected as part of a fact in issue or of what seems to be implied by a fact in issue; (2) facts showing the absence of cause of the fact in issue; (3) facts showing the absence of effect of the fact in issue; (4) facts showing the absence of effects (other than the fact in issue) of the probable cause of the fact in issue. And as it is essential to facts positively relevant that they make the fact in issue more likely, so those facts only are negatively relevant which make the existence of the fact in issue less likely.

Again, as facts are relevant only by reason of their being connected

with the fact in issue, it follows that to disprove the connection of an alleged relevant fact with the fact in issue is as efficacious as to disprove the existence of the fact. To show, for instance, that an alleged cause of a fact in issue would not really have as effect the fact in issue; or to show that an alleged effect of a fact in issue is really the effect of some other cause, does as well as to show that the alleged facts never existed. And as the connection of an alleged relevant fact may be disputed, so it may be affirmed in anticipation of dispute. That is to say, all facts which tend to prove or disprove the connection in the way of relevancy between facts in issue and alleged relevant facts are themselves relevant.

As relevant facts may be proved and as the mode of proof of any fact is (beyond the affirmation of witnesses of the fact) by means of facts relevant to it, it follows that facts relevant to relevant facts are themselves relevant.

These considerations suggest the following rules, which are, I submit, sufficient to decide, and the simplest test by which to decide, whether any fact offered in evidence is relevant:—

RULE I.—No fact is relevant which does not make the existence of a fact in issue more likely or unlikely, and that to such a degree as the Judge considers will aid him in deciding the issue.

Rule II.—Subject to Rule I., the following facts are relevant:—

(1) Facts which are part of, or which are implied by, a fact in issue; or which show the absence of what might be expected as a part of, or would seem to be implied by, a fact in issue;

(2) Facts which are a cause, or which show the absence of what might be expected as a cause, of a fact in issue;

(3) Facts which are an effect, or which show the absence of what might be expected as an effect, of a fact in issue;

(4) Facts which are an effect of a cause, or which show the absence of what might be expected as an effect of a cause, of a fact in issue.

RULE III.—Facts which affirm or deny the relevancy of facts alleged to be relevant under Rule II. are relevant.

RULE IV.—Facts relevant to relevant facts are relevant.

I proceed in the next chapter to decide by reference to the above rules all the cases quoted in illustration of the rules set forth in the Evidence Act. But before doing so I will give a single example of each kind of relevancy according to my classification. And, to avoid frequent recital of data, I will take all my examples from a single case,

though some of the details must needs be imaginary, especially as I have no report of the case to refer to.

It will be generally remembered that some years ago a German named Muller was tried for the murder of an old gentleman, a banker named Briggs, by beating him with a life-preserver, as they were travelling together by rail, and then throwing him out of the train. Muller tried to make his escape to America, but was pursued and arrested on his arrival there. One point urged in the prisoner's defence was that he was not physically strong enough to commit the murder as alleged. His object appeared to be robbery.

The kinds of relevancy according to Rule II. are four; but, as the first clause contains two classes with an apparent difference, they may be taken for the purpose of illustration as five; and as each kind may be either positive or negative, the number becomes ten. And as by Rule III. the connection of a fact with the fact in issue may be disputed as well as its existence, the number of illustrations required is twenty. These I give in order.

1. *Part of fact in issue.*—It would be relevant to prove that, at the time the offence was said to be committed, a witness by the roadside got a glimpse, as the train passed, of the prisoner standing up in the carriage with his hand raised above his head.

2. *Disputing the connection.*—It would be relevant to shew that at the time in question, the prisoner had occasion to close a ventilator in the top of the carriage.

3. *Absence of what might be expected as part of the fact in issue.*—It would be relevant to show that no noise was heard by the occupants of the next compartment.

4. *Disputing the connection.*—It would be relevant to show that the occupants of the next compartment were fast asleep.

5. *Fact implied by a fact in issue.*—It would be relevant to show that Muller was armed with a weapon.

6. *Disputing the connection.*—It would be relevant to show that such a weapon could not have caused the marks found on the body.

7. *Absence of fact implied by fact in issue.*—It would be relevant to show that Muller was physically a very weak man.

8. *Disputing the connection.*—It would be relevant to show that under the circumstances but little strength was required.

9. *Cause.*—It would be relevant to show that Mr. Briggs had done Muller some great injury.

10. *Disputing the connection.*—It would be relevant to show that

Muller was not aware that it was Mr. Briggs who had done him the injury.

11. *Absence of cause.*—It would be relevant to show that Mr. Briggs had nothing valuable about him to tempt a robber.

12. *Disputing the connection.*—It would be relevant to show that Muller had reason to believe that Mr. Briggs had valuables in his possession.

13. *Effect.*—It would be relevant to show that immediately after the occurrence Muller took passage for America.

14. *Disputing the connection.*—It would be relevant to show that Muller had sudden and urgent business that called him to America.

15. *Absence of effect.*—It would be relevant to show that the railway carriage bore no marks of a struggle.

16. *Disputing the connection.*—It would be relevant to show that Mr. Briggs was too old and feeble to offer any considerable resistance.

17. *Effect of a cause of a fact in issue.*—It would be relevant to show that Muller had just before provided himself with a life-preserver.

18. *Disputing the connection.*—It would be relevant to show that Muller anticipated violence to himself on the day in question.

19. *Absence of effect of cause of fact in issue.*—It would be relevant to show that Muller and Mr. Briggs had travelled together for a long distance before the fatal occurrence, and that through all that time Muller had equal opportunity to attack Mr. Briggs and had not done so.

20. *Disputing the connection.*—It would be relevant to show that Muller had ascertained how far Mr. Briggs was going to travel, and that he (Muller) could best effect his escape by getting out at some place the train came to after the occurrence.

CHAPTER III.

THE RULES OF CHAPTER II. SHOWN TO BE IDENTICAL IN EFFECT WITH THE LAW, BY REFERENCE TO THEM OF THE ILLUSTRATIONS TO THE LAW.

SECTION 6, *Illustration (a)*. A is accused of the murder of B by beating him.

Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact. For upon examination every part of a transaction will be found to be connected with every other part as cause or effect or as effects of one cause.

(b) A is accused of waging war against the Queen by taking part in armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open.

That war was waged is one of the facts in issue. These occurrences are part of that fact.

(c) A sues B for a libel contained in a letter forming part of a correspondence.

Besides the fact of the publication there may be in issue the questions of B's good faith or malice, of the sense in which the words were used, whether the occasion was privileged or not. Other parts of the correspondence may be causes or effects of the publication, or effects of B's good faith or malice, or effects of the words having been used in a particular sense, or effects of a relationship between the parties showing that the occasion was or was not privileged.

(d) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate parties successively.

Each delivery is a relevant fact as being part of the fact in issue, Did the goods pass from B to A ?

SECTION 7, *Illustration (a)*. The question is whether A robbed B.

The fact that shortly before the robbery B had money in his possession is relevant as a fact implied by the fact in issue ; that he let other persons know that he had it, is relevant as a cause of the fact in issue.

(b) The question is whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts as effects of part of the fact in issue.

(c) The question is whether A poisoned B.

That B was ill before the symptoms ascribed to poison is relevant as denying the connection of cause and effect between the fact in issue (the poisoning) and the relevant fact (the death) : that B was well is relevant as asserting this connection. Habits of B known to A which afforded an opportunity for the administration of poison, are, if it is alleged that it was availed of, relevant as part of the fact in issue. (If the opportunity was not availed of, the habits are not relevant.)

SECTION 8, *Illustration (a)*. A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant as causes of the fact in issue.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant as a cause of the fact in issue.

(c) A is tried for the murder of B by poison.

The fact that before the death of B, A procured poison similar to that which was administered to B, is relevant as an effect of a cause of the fact in issue.

(d) The question is whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant as effects of the cause of the fact in issue.

(e) A is accused of a crime.

The facts that either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence, or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant; for they are all effects of the immediate cause (namely, A's resolution to commit the offence) of the fact in issue.

(f) The question is whether A robbed B.

The facts that, after B was robbed, C said in A's presence, "The police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant; the latter as an effect of the fact in issue, and the former as a cause of the latter. As to the sense in which C's statement is relevant, see remarks below illustration (j).

(g) The question is whether A owes B 10,000 rupees.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, "I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant. For A's going away without making any answer is an effect of the fact in issue, and the other two facts are causes of that effect.

(h) The question is whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter,

are relevant, the first as an effect of the fact in issue, and the second as a cause of that effect.

(i) A is accused of a crime.

The facts that after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant as effects of a fact in issue.

(j) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which the complaint was made, are relevant as effects of the fact in issue.

The Illustration goes on to say that the fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under Section 8, though it may be relevant as a dying declaration or as corroborative evidence. Now here the strict use of the term relevant has been departed from. That the woman said she had been ravished is relevant, though it does not follow that it is admissible. The Evidence Act declares when statements of facts in issue or relevant facts may be proved. When the statement is a dying declaration is one instance; that such statements may under certain circumstances be proved as corroborative evidence is another; and another is to this effect, that when the conduct of any person is a relevant fact, his statements accompanying or explaining that conduct, or statements made to him or in his hearing affecting that conduct, may be proved. This has nothing to do with relevancy, and the rule seems out of place in Section 8. It is because the woman's statement without complaint is not admissible under this rule, that the Act says that statement is "not relevant as conduct under this section." So above in Illustrations (f), (g), (h), some of the relevant facts are statements. They are also admissible as being connected with conduct. They are simply pronounced relevant. It is plain that it is meant that they may be proved. But that the statements are relevant in the strict sense is sufficient for the present purpose.

(k) The question is whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant as effects of the fact in issue.

The fact that he said he had been robbed, without making any complaint, is relevant, though whether it is admissible or not depends upon the law relating to the question what statements may be proved.

SECTION 9, *Illustration (a)*. The question is whether a given document is the will of A.

The Act says the state of A's property and of his family at the date of the alleged will may be relevant facts. But it may be stated absolutely that so much of the state of A's property or of his family as shows probable cause for his making such a will as the alleged one, or as shows the absence of such probable cause is relevant.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

Upon this issue so much of the position and relations of the parties at the time when the libel was published as shows cause for B's publishing a true libel or a false one, or the absence of such causes, and so much as bears upon the matter asserted in the libel as cause of its truth or otherwise, is relevant.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, because they do not make any fact in issue more or less likely to have happened. But the fact that there was a dispute is relevant if it affected any part of the position and relations of the parties defined above.

(c) A is accused of a crime.

The fact that soon after the commission of the crime A absconded from his house, is relevant as an effect of the fact in issue.

The fact that, at the time he left home, he had sudden and urgent business at the place to which he went, is relevant as denying the connection of cause and effect between the fact in issue and the alleged relevant fact.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden or urgent, as further than that they do not make the fact in issue more likely or unlikely to have happened.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A, 'I am leaving you because B has made me a better offer.'

This statement is relevant as affirming the connection of cause and effect between the fact in issue (B's persuasion) and the relevant fact (C's leaving A's service).

(e) A is accused of theft, is seen to give the stolen property to

B, who is seen to give it to A's wife. B says, as he delivers it, 'A says you are to hide this.'

B's statement is relevant as an effect of a fact in issue.

(f) A is tried for a riot and is proved to have marched at the head of a mob. That the riot occurred is a fact in issue, and the cries of the mob are relevant as parts or as effects of the fact.

SECTION 10, *Illustration.* Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view in Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant to prove the existence of the conspiracy, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

And any of these facts that are so connected with the other fact in issue, A's complicity, as to make it more or less likely, are relevant for that purpose also.

SECTION 11, *Illustration (a).* The question is whether A committed a crime at Calcutta on a certain day.

The fact that on that day A was at Lahore is relevant as denying a part of the fact in issue. The fact that near the time when the crime was committed A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant as making a part of the fact in issue unlikely.

(b) The question is whether A committed a crime. The circumstances are such that the crime must have been committed by A, B, C, or D.

That the crime was committed is adduced as an effect of the fact in issue that A committed it. To show that some other person committed it is relevant as denying the connection of cause and effect between the fact in issue and relevant fact; and to show that no other person committed it is relevant as affirming that connection.

SECTION 12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant. For the amount of damages is a fact in issue, and any fact which will enable the Court to determine it will be found to be connected with the fact in issue in one of the ways specified.

SECTION 13, *Illustration.* The question is whether A has a right to a fishery.

A deed conferring the fishery on A's ancestors is relevant as a cause of the fact in issue. A mortgage of the fishery by A's father is relevant as an effect of the father's right, which is relevant as a cause of A's right. A subsequent grant of the fishery by A's father irreconcilable with the mortgage is relevant as denying a fact implied by that relevant fact. Particular instances in which A's father exercised the right are relevant facts as effects of the father's right. And instances in which the exercise of the right was stopped are relevant as contradicting those relevant facts.

SECTION 14, *Illustration (a).* A is accused of receiving stolen goods, knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant as an effect of a habit of receiving stolen goods, the habit being relevant as a cause of his receiving the particular article with a knowledge that it was stolen.

(b) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant as effects of a habit, which habit is a cause of his delivering the particular piece with a knowledge that it was counterfeit.

(c) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant as the causes of a fact in issue, B's knowledge that the dog was ferocious.

(d) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person is relevant; for A's knowledge on the previous occasions are a cause of his knowledge on the occasion in question, and that there was not time for the previous bills to be transmitted to him by the payee if the payee had been a real person is a cause of his knowledge on previous occasions, and the fact that A accepted the bills is an affirmation of the connection of cause and effect between the fact concerning time and the fact of A's knowledge.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B showing ill-will on the part of A towards B is relevant as an effect of the same cause as that of which the fact in issue is an effect.

The fact that there was no previous quarrel between A and B, is relevant as alleging absence of fact in issue. The fact that A repeated the matter as he heard it is relevant as denying the connection of cause and effect between the two facts, the malicious intention and the publication.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant. For A's good faith is in issue, *i.e.*, Did A, when he represented C as solvent, think him solvent? is an issue. As C's insolvency may be put forward on one side as a cause of A's thinking him not solvent; so, that his neighbours and persons dealing with him supposed him to be solvent, may be put forward as effects of causes which are causes also of A's thinking him solvent. Thus the neighbours' suppositions are effects of causes of a fact in issue.

(g) A is sued by B for the price of work done by B upon a house of which A is owner, by the order of C, a contractor. A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant. For it is in issue, Was B's contract with A? Therefore that A contracted for the same piece of work with C is relevant as showing absence of cause to contract with B, and that he paid C is relevant as an effect of the relevant fact that he contracted with C.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was is relevant as a cause of his knowledge that the real owner could be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant as showing that the

alleged cause of the fact in issue had not the effect of causing the fact in issue.

(i) A is charged with shooting at B with intent to kill him.

The fact of A's having previously shot at B is relevant; for A's intention is a fact in issue. The fact is one which may continue through a space of time, and the previous shooting is an effect of it.

(j) A is charged with sending threatening letters to B.

Threatening letters previously sent by A to B are relevant; for the intention to cause fear is a fact in issue. It is a fact capable of prolonged existence, and the previous letters may be effects of it.

Note.—Should it be objected that the fact in issue is intention at a particular moment and not intention through a space of time, the answer is that previous intention is a cause of subsequent intention, or both are effects of the same cause.

(k) The question is whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant as effects of the cause of the fact in issue or as showing absence of cause of the fact in issue.

(l) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant as effects of effects of the fact in issue.

(m) The question is, what was the state of A's health at the time when an assurance on his life was effected?

Statements made by A as to the state of his health at or near the time in question are relevant as effects of the fact in issue.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant as a cause of B's knowledge, which is a fact in issue.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant, for it is not connected with the fact in issue.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B, is relevant as an effect of a fact in issue, B's intention.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant, for it is not connected with a fact in issue.

Note.—This case, in which a habit is declared irrelevant, has some resemblance to that of Illustration (a), where a habit is relevant. But there is a real difference between the two. The man who habitually shoots at people with intent to murder them has in each case a definite intention of killing the particular person shot at. There is not, as far as the facts are stated, any ulterior *common* object to connect together the fact of the previous shooting and the fact in issue. But in the case of receiving stolen property the ulterior common object of making dishonest gain by receiving supplies the connection.

(b) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant as an effect of the cause of his committing the crime.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant, as it is not connected with the fact in issue, namely, whether he committed the particular crime.

SECTION 15, *Illustration (a)*. A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant as effects of the cause of the fact in issue.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book, showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive. The question is whether this false entry was accidental or intentional.

The fact that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant as effects of the cause of A's making the particular false entry intentionally.

(c) A is accused of fraudulently delivering to B a counterfeit rupee. The question is whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant as effects of the cause of the intentional delivery of the rupee in question.

SECTION 16, *Illustration (a)*. The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put into that place, are relevant as causes of the fact in issue.

(b) The question is whether a particular letter reached A.

The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant, the first as a cause of the fact in issue, and the second as affirming the connection of cause and effect between the first and the fact in issue.

L. G. J. J.

